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No. 37] NEW DELHI, WEDNESDAY, FEBRUARY 11, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 11th February 1953

S.R.O. 320.—WHEREAS the elections of Sardar Sahib Singh, Shri Abnash Chander, Shri Balwant Rai, Sardar Gulab Singh, Shri Hans Raj, Sardar Kapoor Singh, Sardar Kartar Singh, Shri Kishori Lal, Shri Madho Ram, Shri Sahib Ram, Sardar Sohan Singh, Sardar Ujjal Singh and Shri Yaspal, as members of the Legislative Council of the State of Punjab, by the members of the Legislative Assembly of that State have been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lala Sohan Lal, son of Lala Mohan Lal, resident of "The Manor", Summer Hill, Simla-5;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions by section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order on the said election petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUDHIANA

Harbans Singh—*Chairman.*

Hans Raj Khanna—*Member.*

Parma Nand Sachdeva—*Member.*

ELECTION PETITION NO. 247 OF 1952

Petitioner:

Shri Sohan Lal son of Rai Bahadur Lala Mohan Lal, caste Arora, resident of 'The Manor' Summer Hill Simla-5, a candidate for the Legislative Council of the Punjab State at an election by the members of the Punjab Legislative Assembly.

Versus

Respondents:

1. Shri Abnash Chander, House No. 6352/10/1, Ward No. 1, Ambala Cantt., Qasba Ambala Cantt. Thana Ambala Cantt., Tehsil Ambala, District Ambala, also C/o The Tribune, Ambala Cantt., Member of the Legislative Council.

2. Shri Balwant Rai, Church Road, Civil Lines, Ludhiana (formerly of House No. 480, Kucha Des Raj, Ward No. 1, Ludhiana City), Member of the Legislative Council.

3. Sardar Gulab Singh, 113, Bansanwala Bazar, Jullundur City, Member of the Legislative Council.

4. Shri Hans Raj, Kapoor-di-Hatti, Chaura Bazar, Ludhiana, Member of the Legislative Council.

5. Sardar Kapoor Singh, Nasrali, Ludhiana district, Member of the Legislative Council.

6. Sardar Kartar Singh, V.&P.O. Tanda Urmur, District Hoshiarpur, Member of the Legislative Council

7. Shri Kishori Lal, House No. 3239, Ward No. 3, Hoshiarpur, Member of the Legislative Council.

8. Shri Madho Ram, House No. 32, Ward No. 5, Qasba Panipat, Thana Panipat City, Tehsil Panipat, Rajputan Street, Panipat, District Karnal, Member of the Legislative Council.

9. Shri Sahib Ram, V.&P.O. Chautala, Tehsil Sirsa, District Hissar, Member of the Legislative Council.

10. Sardar Sahib Singh, Village Patti, Kirpal, P.O. Shri Jiwan Nagar, Zail Kucha Bodh, Thana Rania, Tehsil Sirsa. District Hissar, Member of the Legislative Council.

11. Sardar Sohan Singh, V.&P.O. Chatanpura *via* Majitha, District Amritsar, Member of the Legislative Council.

12. Sardar Ujjal Singh, House No. 261, Ward No. 3, Panipat Town, Tehsil Panipat, District Karnal, Present address: 12, Curzon Road, New Delhi, Member of the Legislative Council.

13. Shri Yashpal, Daily 'Milap', Jullundur City, Member of the Legislative Council.

14. Shri Dilbagh Singh, House No. 121/1, Kucha Zailghar, Jullundur City.

15. Sardar Dasaundha Singh, Advocate, Abdul Haye Road, Ludhiana.

16. Sardar Daswandha Singh, P.O. Jamnanagar, District Ambala.

17. Shri Ravi Nandan, Charlie Villa Annexe, Simla-2, (formerly of 183, Civil Lines, Jullundur City).

ORDER

(*Per Harbans Singh, Chairman*)

Thirteen members of the Punjab Legislative Council were elected by the elected members of the Punjab Legislative Assembly. Shri Sohan Lal, who unsuccessfully contested this election during March, 1952, filed this petition challenging the aforesaid election. The main ground taken up by him was that the result of the election has been affected by the rejection of one ballot paper, which should have been accepted, and by the acceptance of some other ballot papers which should have been rejected. He prayed for a recount after rectifying these defects and claimed a seat for himself in place of Shri Sahib Singh, one of the returned candidates, or such other of the candidates who may be eliminated as a result of the recount. The following issues were settled, as a result of the replies put in on behalf of Shri Sahib Singh and some of the other respondents.

1. Was the ballot paper, mentioned in paragraph 9 of the petition, not validly rejected?

2. Were any of the ballot papers accepted as valid, liable to be rejected on account of uncertainty with regard to the preferences, as detailed in the last portion of paragraph 8 of the petition?

3. If issues Nos. 1 and 2, or either of them is found in favour of the petitioner, is a recount necessary, and is the petitioner entitled to be declared as elected as a result of this recount, and if so, which of the respondents would be affected thereby?

2. At the request of the petitioner, he was allowed to inspect the ballot papers and the return showing the result of the election. Shri Abnash Chander Bali, respondent No. 1, was present at this inspection on behalf of the contesting respondents. As a result of this inspection, the petitioner gave up his plea on which issue No. 2 was based. On other issues the only evidence recorded was that of Dr. Kuldip Chand Bedi, the Returning Officer of the Constituency. On examination of the rejected ballot paper produced by this witness (marked by the Tribunal

as Ex. P.W. 1/D), it was found that the elector marking this ballot paper gave his "first" and the only preference in favour of Shri Abnash Chander, respondent. This was rejected by the Returning Officer, because after the figure "1", which the elector put in the column provided for the purpose, opposite the name of Shri Abnash Chander Bali, he added a horizontal line thus (1-). According to the Returning Officer, as this was the only paper which had this horizontal line, he considered that from this mark the particular elector casting this vote could be identified, and, therefore, he rejected it. Without disclosing to the candidates or their agents, who were present at the time of the counting as to in whose favour the preference has been given, the Returning Officer showed them the figure '1' and the horizontal mark, and all the candidates, excepting the petitioner, expressed the view that this ballot paper should be rejected. The petitioner, at the time, apparently being under the impression that the vote was in his favour opposed its rejection.

It is obvious that the acceptance of this rejected ballot paper, which is in favour of another candidate, if accepted, would not directly help the petitioner. It was, however, contended on behalf of the petitioner that on account of the rules regarding the transfer of the votes cast in favour of a candidate, over and above the quota required, the acceptance of this ballot paper will increase the surplus votes transferable from Shri Abnash Chander to other candidates, and the ultimate result would be affected provided the recount is done in accordance with the rules which were in force on the 4th of March, 1952, the date on which the Governor of Punjab State called upon the Members of the Punjab Legislative Assembly to fill the relevant number of seats in the Punjab Legislative Council. As the point relating to the applicability or otherwise of the new rules was of some general importance, we heard the Advocate General, Punjab, on the point, and we received a good deal of assistance from him as also from Mr. Sethi, counsel for the petitioner.

4. The first point for determination, therefore, is whether ballot paper, Ex. P.W. 1/D, was or was not properly rejected. According to clause (d) of sub-rule (1) of rule 92 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, (hereinafter referred to as the Rules) a ballot paper shall be invalid "on which any mark is made by which the elector may afterwards be identified." The ballot paper, above referred to, was rejected under this provision. It was urged on behalf of the petitioner that it is not every mark or writing which is placed on the ballot paper that renders the same void. The mark or the writing should be such as would reasonably lead to the identification of the elector afterwards. Reference, in this connection was made to the leading case of Woodward .. *Versus* ..Sarsons and Sadler, reported in 32 Law Times Reports, page 867. The words of the relevant rule on the point were substantially the same as in subclause (d) and were as follows:

> "If the voter .. ..placed any mark on the paper by which he may be afterwards identified, his ballot paper will be void and be not counted ....."

In discussing this point, Lord Coleridge, C. J., observed as follows:

> "It (ballot paper) must not be marked.... so as to make it possible by seeing the paper itself, or by reference to other available facts, to identify the way in which he (the voter) has voted. If these requirements are substantially fulfilled, the ballot paper is void and should not be counted Applying these views to the votes in question before us... .. we disallow Nos. 844 and 889. There is no cross at all, and we yield to the suggested rule that the writing by the voter of the name of the candidate may give too much facility, by reason of the handwriting, to identify the voter, but we cannot think that the mere fact of two crosses being placed, as in Nos. 433 or 928, ought to vitiate the ballot papers... .If there were evidence of an arrangement that the voters should place two marks, so as to indicate that it was that voter, who had used that ballot paper, then by reason of such evidence, such double-mark would be a mark by which the voter could be identified, and then the papers, upon such proof being given should be rejected. But the mere fact of there being two single crosses is not in our judgment a substantial breach of the statute. Neither is the mere fact of an additional mark, such as is found in No. 926 .....nor the marks on Nos. 1726, 2140, 3562, or 911, though in these cases also extrinsic evidence might make such peculiarities indications of handwriting ...."

The principle enunciated above is clear enough. A ballot paper is liable to be rejected only if, either the mark itself reasonably gives the indication of the voter, or there is some extrinsic evidence from which it can be inferred that the mark was placed by the voter by some arrangement. So far as the present case is concerned, it is abundantly clear that the mark was not placed by any previous arrangement. If the mark had been placed by arrangement, Shri Abnash Chander Bali would never have taken the position at the time of the counting that the ballot paper should be rejected and Shri Sohan Lal would never have tried to have this

ballot paper declared valid. In fact, the parties were labouring under a mistake and did not, in fact, know in whose favour the vote had been cast. A horizontal mark, by itself, would also indicate nothing. Possibly, the elector by putting this mark after figure '1' only wanted to make sure that figure '1' put by him is, in no way, changed to any other figure by adding another figure after it. In *Multan Town's Muhammadan Constituency* 1937, reported in Sen and Poddar's Indian Election Cases at page 582, the question of validity or otherwise of several ballot papers containing, *inter alia*, two crosses (××) or a cross in addition to another mark (×) or a cross with two horizontal lines, one over and the other under it (X), came up for consideration, and it was held by the Commission that these additional marks, in no way, invalidated the ballot papers.

5. In fact, in addition to the ballot paper, Ex. P.W. 1/D, above mentioned, which was rejected by the Returning Officer, there were three other ballot papers Nos. 13, 34 and 66—marked by the Tribunal as Exs. P.W. 1/F., P.W. 1/G and P.W. 1/H, respectively, which had certain peculiarities. On ballot paper No. 13, figure '1' was marked in a double line, apparently because of a badly sharpened pencil. On 34 there was a dot after figure '1', and in case of 66, figure '1' was not put in the column provided for putting the mark against the name of the candidate, but was actually in the column in which the name was written. These peculiarities, however, were not considered by the Returning Officer, sufficient for identifying the voter, and the choice of the voter was, otherwise, fairly clear, and these ballot papers were, very rightly, accepted as valid by the Returning Officer.

6. In the ballot paper, in question, the horizontal line after figure '1' was, in no way, more material than the above mentioned peculiarities in other ballot papers, and, in any case, as discussed above, this was not a mark from which the voter could be identified and the chance of there being any arrangement between the voter and any candidate is altogether excluded. For these reasons, therefore, it must be held that the ballot paper, Ex. P.W. 1/D, was improperly rejected.

7. With regard to the question of the application of the old or the amended rules in recounting, it is necessary to state a few facts. The elected members of the Punjab Legislative Assembly were called upon to fill the seats in Punjab Legislative Council, by a notification—No. 3333/L.C./Elections, dated the 4th of March, 1952,—published in the Punjab Government Gazette (Extraordinary) of the same date. By another notification published in the same gazette (No. 3334/L.C./Elections) the 13th of March, 1952, was fixed as the last date for making nominations, 14th March as the date for scrutiny of nominations, and 17th of March, 1952, as the last date for the withdrawal of candidatures. By another notification, Secretary of the Punjab Legislative Assembly was appointed by the Election Commission, as the Returning Officer. Polling actually took place on the 27th of March, counting on the 29th and the result was declared the same day. On the 10th of March, 1952 (*i.e.*, three days before the last date fixed for making the nominations, and six days after the notification of the Governor, mentioned above, calling upon the elected Members of the Punjab Legislative Assembly to fill the seats in the Punjab Legislative Council), by a notification—S.R.O. 434, published in the *Gazette of India* (*Extraordinary*)—the Central Government, in accordance with the provisions of Section 169 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), substituted new rules 96 to 102 for the existing rules. The counting of votes was done by the Returning Officer, and result declared on 29th March, in accordance with these amended rules.

8. Learned counsel for the petitioner argued that (1) the election must be on the basis of law and rules in existence on the date of the commencement of the election, and the amended rules coming into force after the commencement of election, cannot be applied to that election retrospectively, (2) if amendments be allowed to be made during the progress of the election, that would seriously prejudice fair elections, because, the party in power may alter the rules to its advantage, and (3) the vested right of the petitioner, to have the election conducted and counting done in accordance with the rules in operation on the date of the commencement of election, cannot be taken away.

9. The main argument of the counsel for the petitioner was that the "election commenced" on the 4th of March, 1952, when the Governor by the notification No. 3333/L.C/Elections called upon the elected members to elect members to the Legislative Council "*in accordance with the Act and of the rules and orders made* thereunder." Stress was laid on the words italicised used in the notification, as indicating that election was to be conducted according to the Act and the Rules as they were in force on that date, and that subsequent changes were not to be taken notice of. So far as the notification is concerned, it only reproduces the words of Section 18(1) (b) of the Act, which runs as follows:

> "After the names of the members of the Legislative Assembly of the State first constituted under the Constitution have been notified under Section

67. call upon such members, by another notification in the Official Gazette, to elect members *in accordance with the provisions of this Act and of the rules and orders made thereunder* before such date as may be appointed in this behalf by the Election Commission and specified in such notification."

The words italicised and on which stress was laid, are words of general nature, meaning no more than "to be made according to Law....."—the words that are used in the Writ, in England calling upon the Sheriff or other Returning Officer to cause an election to be made, of members to serve in Parliament..... (see the form given in Rogers on Elections, Volume II, 20th Edition at page 425.) The use of the words certainly do not indicate that the entire election must necessarily be in accordance with the Act or the Rules, as they stood on the date of the notification, and that the same cannot be modified. The real question is whether the Central Government was empowered to modify the Rules, and if so, have the subsequent rules been expressly, or by implication, applied to the conduct of "the election" which to use the terminology of the counsel for the petitioner "has already commenced", or to be more exact about which a notification, as required by clause (b) of sub-section (1) of section 18 of the Act has already been published. The question of retrospective effect and the nature of the so-called 'vested right' will come in for discussion while dealing with this question.

10. It was not denied that under section 169 of the Act, Central Government has ample power to amend the rules. The form, in which the amendment has been made, further leaves no doubt that the intention was to apply the amended rules to all stages of the election after the date of the amendment. It runs thus:

"For rules 96 to 102 of the said Rules, the following rules shall be substituted."

11. The effect of such a form of wording was considered by the Supreme Court in *Shamrao Versus District Magistrate*, Thana, reported in A.I.R. 1932 Supreme Court, page 324. This was a case under the Preventive Detention Act, and at page 326 Bose J., observed as follows:—

"The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act *with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.*

It is clear, therefore, that after the 10th of March, 1952, the old rules must be taken to have been scored out and the new rules written in its place. The new rules formed an integral part of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, *i.e.* part of the Rules made under the Representation of the People Act, 1951. The application of the new rules to the election in question would, therefore, in no way, conflict with the wordings of the notification of the 4th of March, 1952, directing the election to be "in accordance with the Act and Rules and orders made thereunder."

12. That statutary rules can be made to apply retrospectively is well recognised. In Craies on Statute Law, fifth edition, at page 358, it is stated as under:

"There are at least four reported instances of retrospective penalties inflicted during the last war. In Director of Public Prosecutions *Versus* Lamb (1941) (2 K. B. 89) regulation 5(1) of the Defence (Finance) Regulations, 1939, provided a penalty against the sale of foreign currency. A later regulation increasing the penalties came into force on June 11, 1940. The prisoners were charged with offences committed between September 3, 1939, and May 11, 1940. The Divisional Court held that the language of the amending Order was clear in imposing increased penalties on persons thereafter convicted. This case was applied in Buckman *Versus* Button (1943) (K.B. 405), in a case of failure to register a business in controlled goods.

This now brings us to the argument of the learned counsel that as the amendment seeks to affect the "acquired or vested right" of the petitioner, the same should be so interpreted as not to give it a retrospective effect. No doubt, "election", generally speaking, commences on the publication of a notification, and even for some purposes prior to that, *e.g.* under section 79 a person is said to be a "candidate" as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. However, it is necessary to see what right was vested

in the petitioner either before or after he was duly nominated as a candidate. Prior to the nomination, he had a right to stand for the election—a right not peculiar to him, but one generally enjoyed by all those citizens of India, who possessed the requisite qualification regarding age etc. Is there any presumption that the legislature did not intend to take away such a right? Craies at page 368 remarks that: ".. ...it must be a "vested right" in the strict sense in order to raise the presumption, for "there is no presumption that an Act of Parliament is not intended to interfere with existing rights. Most Acts of Parliament, in fact, do interfere with the existing rights." Channel J., in Starey ..*Versus*...Graham (1899) 1 Queen's Bench Division page 406 at page 411 defined "right acquired" as "some specific right which, in one way or another, has been acquired by an individual, and which some persons have got and others have not got. It does not mean "right" in the sense in which it is often popularly used."

12. The right of a petitioner to stand for the election was more in the nature of a "privilege", rather than an "acquired right", and if, before the date of nomination, that privilege is subjected to certain conditions different from the previous ones, this cannot be taken to have affected his vested interest'. *In Reynolds and another Versus Attorney General for Nova Scotia* and others (1896 Appeal Cases page 240), Reynolds, under an existing licence, had been given a 'privilege' to have the same extended for a year under Section 96 of the relevant Act. Before the expiry of the period of the licence, Section 95 was repealed by the Amending Act, and 'leases' were substituted for 'licences' for which appellants should have applied before the expiry of the lease, which they did not. It was held by the Privy Council that "they had a privilege to get an extension for one year under Section 95 but had no accrued right .." .

13. Nomination papers by the petitioner, and, as a matter of fact, by all the candidates were filed on the 13th of March, 1952, and prior to that he had no "accrued right" in any sense of the term; and the amendment in question came into force three days prior to that. The petitioner must, therefore, be taken to have filed his nomination papers with open eyes, knowing full well that the new rules have come into force. He has, therefore, not even been prejudiced in any way in contesting the election.

14. Even otherwise, it would appear to be too much to suggest that no alterations can be made in the Rules, once a notification under section 18 of the Act is issued. Rules cover a vast range of subjects, for example, provision of ballot boxes, sealing, counting, notifying results etc. If during the conduct of election, some improvements in the working are found necessary, it woud be absurd to suggest that the Central Government will be helpless in the matter and no change was possible, even if it be of a purely procedural nature. The change brought about by the amended rules is of a purely technical nature, only in matters of detail. The mere fact that this minor change may affect the result in the present case, is certainly no ground for holding that the amendment is not of a procedural or technical nature. According to the old rules, the "quota" of valid votes required by a candidate being elected was arrived at by dividing the number of valid votes by the number of seats to be filled in and adding one to the figure so obtained, the fraction being ignored. If a candidate obtained more votes than the quota so arrived at, the surplus votes were credited to other candidates according to the second or subsequent preferences. The new rules gave a notional figure of 100 to the vote, *i.e.* the valid votes were multiplied by 100, and then divided by the number of seats, and the quota was arrived at by adding 1 to this figure. Thus, wastage of votes by the disregard of fractions etc., entailed under the old rules was reduced to the bare minimum.

The very object of voting by "single transferable vote" is, to ensure that, so far as practicable, no vote should go waste. This is said to be the chief and characteristic merit of election on "proportionate representation" basis, which is the name given to this method of voting. The new rules, merely provide an improved method of counting and it is difficult to understand how any one can be said to have an "acquired right" in insisting that the old method rather than the improved one of counting should be adopted.

15. In view of the above discussion, it is clear that the rules 96 to 102, as amended by the notification of 10th March, 1952, were rightly applied by the Returning Officer, in counting the votes and are the only rules according to which recount can be taken. We are fortified in the view taken by us by a decision of the Madras Tribunal, in Election Petition No. 324/52 *Sri S. K. Sambandhan Versus Sri M. Surya Rao and others* published in the *Gazette of India (Extraordinary)*, dated the 2nd of December, 1952, in which the point involved was exactly the same as has been raised in this case.

As it was conceded on behalf of the petitioner that the result of the election will not be affected, if a recount is taken according to the new rules, it is not, therefore, necessary to take a recount.

For the reasons given above, we would hold that though the ballot paper rejected by the Returning Officer was improperly rejected, yet this improper rejection has, in no way, affected the result of the election. This petition, therefore, fails and is dismissed.

The petitioner will pay the costs of the respondents as follows:

(1) Shri Sahib Singh, respondent No. 9 Rs. 250.

(2) Shri Abnash Chander, respondent No 1 Rs. 250.

(3) Shri Kapoor Singh, respondent No. 5
Shri Ujjal Singh, respondent No. 12.
Shri Balwant Rai, respondent No. 2. } Rs. 50 each.

The other respondents did not contest the petition and, therefore, we award no costs to them.

The petitioner will also pay Rs. 350 to the Advocate General and Rs. 150 to S. Balak Singh Bagga, Government Pleader, who assisted him.

(Sd.) HARBANS SINGH, *Chairman.*

The 5th February 1953.

We agree.

(Sd.) H. R. KHANNA, *Member.*

(Sd.) P. N. SACHDEVA, *Member.*

The 5th February 1953.

Announced in open court

PRESENT:

S. Gurbachan Singh, Pleader, for the petitioner.

S. Sahib Singh, respondent No. 10, in person with Shri Ganga Bishan, Advocate. Shri Abnash Chander, Respondent No. 1. Shri B. R. Ahluwalia, Respondent No. 2.

(Sd.) HARBANS SINGH.

(Sd.) H. R. KHNNA.

The 5th February 1953. (Sd.) P. N. SACHDEVA.

[No. 19/247/52-Elec.III.]

S.R.O. 321.—WHEREAS the election of Shri Mahadeo, son of Murlidhar Paliwal, merchant of Naila, Tahsil Janjgir, District Bilaspur, as a member of the Legislative Assembly of Madhya Pradesh from the Janjgir-Pamgarh double member constituency, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Jwalaprasad Mishra, son of late Pandit Chandoolal Mishra of Akaltara, Tahsil Janjgir, District Bilaspur;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJNANDGAON

ELECTION PETITION NO. 292 OF 1952 FROM JANJGIR-PAMGARH CONSTITUENCY OF BILASPUR DISTRICT

ELECTION CASE NO. 3 OF 1952 OF RAJNANDGAON

Quorum

Chairman:

Shri S. A. Pande, M.A., LL.B.

Members of the Tribunal:

Shri G. W. Chiplonker, M.A., LL.B.

Shri B. R. Mandlekar, B.A., LL.B.

Petitioner:

Jwalaprasad Misra, son of Late Pandit Chandoolal Mishra, Medical Practitioner, of Akaltara, Tahsil Janjgir, District Bilaspur.

Versus

Respondents:

1. Shri Mahadeo, s/o Murlidhar Paliwal, merchant of Naila, Tahsil Janjgir, District Bilaspur.
2. Shri Ganeshram Anant, s/o Moharsai, Deputy Minister, Madhya Pradesh, Nagpur.
3. Jagdishchandra Tiwari, s/o Kaushalprasad Tiwari, pleader of Janjgir, T. Janjgir, District Bilaspur.
4. Shri Bedram, s/o Soncharan, Pleader Janjgir, T Janjgir, District Bilaspur.
5. Shri Ramayan, s/o Budhoo of Nariyara, T Janjgir, District Bilaspur.
6. Shri Bahorik, s/o Ledhwa, of Pamgarh, T. Janjgir, District Bilaspur.
7. Hiralal, s/o Ramchandra Bhoga, of Bhogapara (Sheorinarayan), T. Janjgir, District Bilaspur.
8. Shri Ishwari Prasad, s/o Tilakram Kashap of Janjgir, T. Janjgir, District Bilaspur.
9. Shri Gajraji, s/o Ganderai of Janjgir, Tahsil Janjgir, District Bilaspur.
10. Shri Baboosingh, s/o Ramkrishnasingh, andlord of Janjgir, District Bilaspur.
11. Shri Bhikhari, s/o Bisru of Bhaisda, T. Janjgir, District Bilaspur.
12. Shri Gajanan Prasad Gourha, s/o Badriprasad of Neoo, Station House Pamgarh, T. Janjgir, District Bilaspur.
13. Shri Ramchand Bhoga of Bhogapara (Sheorinarayan), T. Janjgir, District Bilaspur.

ORDER

Delivered on this 31st day of January 1953

At the last elections for the Madhya Pradesh Legislative Assembly respondent No. 1 Mahadeo was declared elected for the general seat and respondent No. 2 Ganeshram Anant for the reserved seat from the double-member constituency of Janjgir-Pamgarh. The petitioner Jwalaprasad Mishra has filed the present election petition to challenge these elections. His petition originally sought the following three alternative reliefs:—

(1) Declarations that the election of respondent No. 1 is void and that the petitioner who had secured the next highest number of votes for the general seat has been duly elected;

(2) a declaration that the election of both the candidates is wholly void; or

(3) a declaration that the election of respondent No. 1 is void.

2. The material averments in the petition, briefly stated, are as follows:— Respondent No. 1 is a partner of a firm named the Naila Food Supply Company (hereafter called the firm). This firm acted as the procurement agent of the Madhya Pradesh Government under the contract dated 23rd January 1951 of which Ex. P-1 is the certified copy. By this contract the firm had undertaken to supply foodgrains and render incidental services to the State Government. This contract was subsisting and operative on 15th November 1951, on which date respondent No. 1 had filed his nomination paper before the Returning Officer for the general seat. Respondent No. 1 was, therefore, disqualified to stand as a candidate for the State Legislature under Section 7(d) of the Representation of the People Act, 1951 (hereinafter called the Act). The Returning Officer, however, accepted respondent No. 1's nomination paper. This acceptance materially affected the result of the election. The petitioner sought his two alternative reliefs of setting aside respondent No. 1's election and his claim for being declared duly elected in place of respondent No. 1.

3. Paragraphs 5 to 10 of the petition contained averments upon which the petitioner had founded his third alternative relief of a declaration that the election of both the seats was void. Briefly stated, these averments were as follows:— The elections were not free elections because undue influence had extensively prevailed at the elections on account of (a) the speech of Shri Jawaharlal Nehru, the Prime Minister of India and the President of the Indian National Congress, at Julunder to the effect that vote for the respondent No. 1 was a vote for Shri Jawaharlal Nehru, (b) Madhya Pradesh Government's Order waiving the right of pre-emption, (c) the Prime Minister's visit and speech at Bilaspur before the elections and (d) use of Government machinery on the occasion. The ballot boxes were tamperable. The counting of votes was conducted by a large staff. It was not possible for the candidates or their agents to supervise the counting. The counting was irregular. The returns of expenses submitted by the successful candidates were irregular and omitted amounts spent by the Congress organisation.

4. On 14th November 1952 the petitioner sought to withdraw these averments in paras. 5 to 10 and also his relief for challenging the elections of both the seats as a whole. Respondent No. 1 had opposed that application. We permitted the withdrawal of these averments.

5. Respondents Nos. 1 and 2 alone appeared to contest the petition. Their defence, briefly stated, was as follows:—Although respondent No. 1 was a partner of the firm, and although that firm had executed the agreement dated 23rd January 1951, Ex. P-1, the agreement did not amount to a contract for the supply of goods to, or the performances of any services by, the Madhya Pradesh Government, and did not, therefore, entail any disqualification of respondent No. 1 for membership to the State Legislature under Section 7(d) of the Act. The acceptance of his nomination paper by the Returning Officer was, therefore, legal. The result of the election would not have been materially affected even if respondent No. 1's nomination paper had been rejected as respondent No. 13 Ramchandra was another alternative candidate for the general seat on behalf of the Congress party, and would have been elected in place of respondent No. 1. The verification of the petition was not in accordance with the Civil Procedure Code and, therefore, fatal to its maintainability. The petition was not accompanied by a list signed and verified in accordance with Section 83(2) of the Act setting forth the full particulars of the alleged corrupt practices. The petition is, therefore, liable to be dismissed under sections 85 and 90(4) of the Act. It was time barred, because it had asked for setting aside the elections of both the seats, and was, therefore, liable to be presented on or before 13th May 1952 in accordance with Rule 119(b) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 (hereinafter called the Rules). The limitation is not saved for the other two alternative reliefs by Rule 19(a) *ibid*, because the petition is governed by Rule 119(b) when it includes the relief for setting aside the elections for both the seats. The constitution of this Tribunal was *ultra-vires*, because the Election Commission was liable to dismiss the petition under Sec. 85 of the Act.

6. An oral objection was raised on behalf of respondent No. 1 on 20th December 1952 that we should not have permitted the amendments of paras. 5 to 10 of the petition, as the amendments deprived the respondent No. 1 of the plea of limitation.

7. The issues in the case and our findings on them are as follows:—

Issues	*Findings*
1. Whether by reason of his partnership in the Firm Naila Food Supply Company which had entered into the agreement (Ex. P-1) dated 25-1-51 with the State Government, respondent 1 Mahadeo was ineligible to stand as a candidate for the State Assembly ?	1. Mahadeo was ineligible
2. Whether consequently acceptance of his nomination paper by the Returning Officer was illegal ?	2. Yes.
3. Whether the acceptance materially affected the result of the election ?	3. Yes.
4. Whether the verification of the election petition is fatal to its maintainability ?	4. No.

Issues	*Findings*
5. Whether the constitution of this Election Tribunal is *ultra-vires* ?	5. No.
6. Whether the election petition is time-barred and is consequently not maintainable ?	6. The election petition is within time for setting aside respondent No. 1's election.
7. What is the result of the findings on the above issues on the elections of respondents 1 and 2 ?	7. Respondent No. 1's election void. Respondent No. 2's election not affected.
8. (*a*) Whether the Tribunal had no jurisdictin to permit the pleas in paras 5 to 10 of the petition to be withdrawn ?	8. (*a*) It has jurisdiction.
(*b*) If so what is the legal effect ?	(*b*) Does not arise.
9. Relief and costs ?	9. Petition allowed with costs.

Reasons for our findings

Issue No. 1

8. Section 7(d) of the Act provides "A person shall be disqualified for being chosen as, ... a member ..... of the Legislative Assembly..... of a State ———

* * * *

(d) If whether by himself or by any person or body of persons in trust for him or for his benefit or on his accunt, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government;

* * * *".

We have, therefore, to examine whether the agreement Ex- P-1 dated 23rd January 1951 falls within the mischief of Section 7(d) so as to disqualify respondent No. 1.

9. By that agreement the firm, of which respondent No. 1 was a partner, had undertaken to supply foodgrains to the Madhya Pradesh Government from time to time on the terms specified therein and to render incidental services for such supplies. It is common knowledge that the State Government procures foodgrains on a large scale from the last decade to ensure supplies essential to the life of the State and the Nation, and that such procurements are made through the agency of procurement agents like the firm all over the State. The agreement Ex. P-1 provided for the firm's contract for the supply of foodgrains and services to the State Government.

10. Shri Naik contended on behalf of respondent No. 1 that the agreement Ex. P-1 did not amount to a contract specified in Section 7(d) of the Act, because it did not specify the quantities of the foodgrains which the firm was to supply and the price which he was to pay, and was, therefore, void under Section 29 of the Indian Contract Act. That section provides "Agreements the meaning of which is not certain, or capable of being made certain, are void". The learned counsel also referred us to illustration (a) to that section, which is as follows:—

"(a) A agrees to sell to B 'a hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty."

The agreement is question Ex. P-1 is not in any way uncertain in the sense contemplated by Section 29 *ibid* Clause 1 of the agreement Ex. P-1 provides "during the period commencing from 1st November 1950 to the date of termination of this agreement under clause 12, the Agent will purchase for the Government at the most economical prices, the kinds, qualities and quantities of foodgrains as may be specified by the Deputy Commissioner. .....The agent will render such further services as provided in clause 15, if so required by the Deputy Commissioner."

11. Clause 9 of the agreement provides "the Agent will be paid the price paid for foodgrains which is accepted under clause 6 and such incidental charges as the Director of Food Supplies may consider reasonable." Clause 15 provides for the various kinds of services which the firm was to render. Clause 16 provides that the firm was to be paid a commission at such rates as may be fixed from time to time as consideration for the agreement. The meaning of the agreement was thus in no way uncertain. On the other hand, sections 4 to 10 of the Indian Sale of Goods Act clearly show that the agreement Ex. P-1 is a valid contract of sale. Section 4 provides that a contract of sale of goods includes an agreement to transfer goods, and that such contract may be conditional. Sub-section (3) of the same section provides that where under a contract of sale of goods the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. Section 5(1) lays down that the contract may provide for immediate delivery and payment of the price or for future deliveries and payments. Section 6(1) provides that even future goods can form the subject of a contract. Section 6(2) lays down "there may be a contract for sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen." Sections 8 and 10 provide for avoidance of such contracts by reason of destruction of goods or non-fixation of the price by a third party nominated to fix it. These sections show that such avoidance takes place only if those contingencies arise and not till then.

12. Sections 4 to 10, therefore, clearly show that the contract Ex. P-1 was a valid contract, and that the firm's liability to supply goods and services to the State Government thereunder was enforceable at law. As the respondent No. 1 was a partner of the firm which had thus undertaken to supply foodgrains and services to the State Government, and as this agreement was in force on 15th November 1951, he became disqualified to be a member under section 7(d) of the Act. We find accordingly.

13. This conclusion is in no way affected by the subsequent events which we proceed to set out. On or about 10th March 1952 a new agreement came to be executed by the firm with the State Government. It is Ex. R-2. It contained the same terms as the agreement Ex. P-1. The two agreements differ in the following matters:—

(1) While the first agreement related to foodgrains in general, the second was limited to the supply of rice.

(2) While the first agreement was executed by respondent No. 1 personally on behalf of the firm, the second was executed by one Imratlal on the firm's behalf. Ex. P-2 which is the certified copy of the registration of the firm of respondent No. 1 which firm was a partner of the Naila Food Supply Company, shows that Imratlal was one of the two partners of the firm.

(3) The second agreement was given retrospective effect from 1st November 1951. It is quite clear from the evidence of

It is quite clear from the evidence of Shri K. G. Ayachit, the Food Officer, that the agreement Ex. P-1 was in force till 10th March 1952. In any case, it is plain that both the agreements were made by the firm of which respondent No. 1 was a partner, and that consequently respondent No. 1's disqualification created by the first agreement continued even under the second. We find accordingly.

Issue No. 2

14. We consequently hold that the acceptance of respondent No. 1's nomination paper by the Returning Officer was illegal, as the latter was disqualified to be a member under Section 7(d) of the Act.

Issue No. 3

15. Respondent No. 1 would never have been elected as a member of the State Legislature, if his nomination paper had been rejected by the Returning Officer. In that case any other candidate, but not respondent No. 1, would have been elected. The improper acceptance of respondent No. 1's nomination paper has, therefore, we find, materially affected the result of the election.

Issue No. 4

16. In his verification of the petition the petitioner declared what paras he verified from his own knowledge and what paras he verified upon information received and believed by him to be true. With respect to the latter verification

he had further stated in that verification that he had received that information from news papers and pamphlets. The respondents attacked this latter verification on the ground that the source of his information was hearsay. This objection appears to us patently untenable. Every verification upon information received can fall under the same category, even when the information is received from other persons. That is not a valid ground for a finding that the verification does not fulfill the requirements or Or. 6 rule 15 of the Code of Civil Procedure. We hold that the verification of the petition is in accordance with law.

Issue No. 6

17. It is not disputed that if the petition had sought a single relief of declaration that the election of both the seats was wholly void, the limitation for the presentation of the petition would have been upto 13th May 1952 under rule 119(b) of the Rules. It is also not disputed that if the petition had sought only the other two reliefs, then it was presented within time.

18. Shri T. P. Naik on behalf of respondent No. 1, however, contended that the petition was liable to be presented on or before 13th May 1952, because it included as one of its reliefs one governed by sub-rule (b) *ibid.* He, therefore, contended that the petitioner could not avail himself of the longer limitation permitted by sub-rule (a) *ibid* for the other two reliefs.

19. Section 84 of the Act provides "A petitioner may claim any one of the following declarations:—

(a) that the election of the returned candidate is void;

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;

(c) that the election is wholly void."

It was not contended on behalf of the respondents that a petitioner cannot claim all the three reliefs in the alternative in a single petition. The Act nowhere requires that the same petitioner has to file three different petitions if he desires any one of the three reliefs in the alternative. It, therefore, appears to us that he can claim any of the three reliefs in the alternative in a single petition.

20. When the petitioner has claimed in the present petition any one of the three reliefs in the alternative, it is quite clear that the limitation for either of the two declarations, *viz.*, (a) that the election of respondent No. 1 is void, and (b) that the election of respondent No. 1 is void and that the petitioner has been duly elected, is governed by the longer period prescribed by rule 119(a) of the Rules, while the limitation for his third relief that the election of both the candidates is wholly void is governed by the shorter period prescribed by sub-rule (b) *ibid.* Sub-rule (b) cannot govern the limitation for the former reliefs. The present case is thus analogous to a suit for an aggregate amount claimed for loans lent on different dates, some of which are time-barred and some of which are within time. In such a suit a Court grants a decree for the amount due on loans which are within time, and dismisses the claim for those loans, recovery of which has become time-barred. We find that rule 119 warrants the same construction.

21. For the reasons which we shall shortly state we find that the election for both the seats is not wholly void, and that the petitioner is not entitled to a declaration that he has been duly elected. We have, therefore, to examine whether his petition for the third relief *viz.*, a declaration that the election of respondent No. 1 is void is within time. We hold that the petition is governed by sub-rule (a) of rule 119 of the Rules, and is, therefore, within time.

Issue No. 7

22. The petitioner has withdrawn all his pleas challenging the elections as wholly void. The result is that the election of respondent No. 2 has not been impeached in any way. The petitioner has only attacked respondent No. 1's election and for the reasons which we have stated in our findings on issues 1 to 3 we find that the election of respondent No. 1 alone is void and must, therefore, be set aside.

Issues 8(a) and (b).

23. Sec. 90(2) of the Act provides that subject to the provisions of the Act every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Rules 16 and 17 of Or. 6 of the Code empower a Court to

strike out, or permit the amendment of, pleadings. We do not find any express provision in the Act or the Rules barring such amendments. We, therefore, find that we had jurisdiction to permit the petitioner to withdraw his pleas in paras 5 to 10 of the petition. We do not accept Shri Naik's argument on behalf of the respondent No. 1 that Sec. 83(3) of the Act negatives the general power of the Tribunal to try the petition in accordance with the Code of Civil Procedure. We find that the Tribunal has inherent power to permit such amendments under Sec. 90(2) of the Act.

24. The objection that these amendments deprived the respondents of the plea of limitation has no validity in fact and in law for the following reasons:—

(1) It is evident that when the petitioner desired to withdraw his averments in those paras, he would not have adduced any evidence to prove the same. The result would have been that the election would not have been declared wholly void. In the circumstances the question whether the petition was within time with respect to that relief would have had no effect on the case.

(2) In any case, the petition was within time with respect to the other two alternative reliefs, and the Tribunal could not have dismissed the petition as time-barred with respect to either of them.

We, therefore, hold that the amendments permitted by us have not prejudiced the respondents in any way.

Issue No. 5.

25. The contention of respondent No. 1 is that the Election Commission was liable to dismiss the petition under Sec. 85 of the Act because it was not properly verified and accompanied by a list setting forth the full particulars of the corrupt practices verified in like manner. The former ground is not tenable, as we have found that the petition is properly verified. The latter ground is also untenable, because by reason of the amendments permitted by us all such pleas of corrupt practices have been withdrawn. The Election Commission itself did not dismiss the petition under Sec. 85 of the Act. We are alive to the provision in Sec. 90(4) of the Act which enables us to dismiss an election petition which does not comply with the provisions of Sec. 83. As that provision shows, we have a discretion in the matter. As, however, adumbrated, we find that no grounds exist for the dismissal of the petition, as after the amendments which we have permitted, it does not contravene any provisions of Sec. 83. When the Election Commission did not feel itself justified to dismiss the petition under Sec. 85, it was justified in constituting this Tribunal in accordance with Sec. 86 of the Act.

26. The reason why the Election Commission did not dismiss the petition under Sec. 85 of the Act is quite clear. When the Election Commission called upon the petitioner to explain why the petition should not be dismissed by it under Sec. 85 of the Act, the petitioner pointed out in his explanation that his petition was essentially directed to challenge the election of respondent No. 1 on the other grounds alleged in the petition, and that he was entitled to do so. The Election Commission was justified to appoint this Tribunal in view of the petitioner's clarification. Thereby the petitioner had indicated that he would not press his relief for challenging the election as wholly void and his averments of corrupt practices in reference to that relief.

Issue No. 9.

27. While we find that the election of respondent No. 1 is void, the petitioner has failed to satisfy us that he would have been elected in the constituency if respondent No. 1's nomination paper had not been accepted. The reasons why we are not so satisfied are briefly as follows:—

(1) If the Returning Officer had rejected respondent No. 1's nomination paper, it is possible that respondent No. 13 Ramchandra Bhoga would have contested the election on behalf of the Congress party, and would not have withdrawn his candidature. The possibility of his contesting the election successfully is not wholly negatived, when the voting in the constituency indicates that the Congress commanded a majority of the votes for both the seats.

(2) Even assuming, that the votes secured by respondent No. 1 would not have gone to respondent No. 13, it is not possible to postulate that those votes would not have been cast at all, and if cast, would not have gone to any of the respondents and thus secured him a majority over the petitioner.

(3) Finally, the conditions contained in Sec. 101 of the Act for claiming such a declaration have not been established by the petitioner.

We, therefore, decline to declare the petitioner as duly elected.

28. We, therefore, allow this petition and declare that the election of respondent No. 1 Mahadeo Murlidhar to the Madhya Pradesh Legislative Assembly is void. Respondent No. 1 shall bear his costs and pay those of the petitioner. We fix Rs. 250 as counsel's fee. The printing charges of Rs. 125 incurred for the publication of the petition shall be paid by the petitioner from his deposit of Rs. 1000 and the balance of his deposit may be refunded to him. He will be entitled to recover these printing charges from respondent No. 1 as costs in this case. The petitioner shall pay the costs incurred by respondent No. 2, if any.

(Sd.) S. A. PANDE, *Chairman.*

(Sd.) G. W. CHIPLONKAR, *Member.*

(Sd.) B. R. MANDLEKAR, *Member.*

The 31st January, 1953.

29. While agreeing to the proposed order for allowing the election petition of the petitioner for declaring the election of respondent No. 1 as void, and not declaring the petitioner as duly elected, I wish to add as under:—

30. The main plank of defence of respondent No. 1 has been that the election petition, as it stands originally, contains paras 5 to 10 and alternative relief clause for declaring the election wholly void and that these cannot be allowed to be struck off as this would amount to allowing an amendment of the petition, which power the Tribunal does not possess and that the respondent No. 1 will be deprived of the plea of dismissal of election petition, in as much as the list, setting forth full particulars of corrupt and illegal practice as required by section 83(2) of the Representation of the People Act, not having been given, and further he would be deprived of contention raising the plea of limitation to the election petition, which has to be dismissed wholly.

31. The Tribunal is endowed with the jurisdiction to ensure a fair and effectual trial of the Election petition. It has not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for; on the contrary every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed. Every Court, whether a Civil Court or otherwise, must, therefore, in the absence of express provision for that purpose, be deemed to possess, as inherent, in its very constitution, all such powers as are necessary to do justice and to determine how its proceedings should be conducted.

32. The prohibition to strike off or amend is sought to be read in section 83(3) in as much as only particulars in the list could be allowed to be amended. The Tribunal has to try the election petition, as nearly as may be, in accordance with the procedure applicable under the Civil Procedure Code for the trial of suits. Striking out of paras 5 to 10 and of alternative prayer in relief clause is included in the power reserved to the Tribunal under section 90(2) of the Representation of People Act.

33. In the present case, no new substantive change is introduced; striking out cannot in strict sense be called amendment. No case has been cited at the Bar that the Tribunal has no power to allow striking off the allegations contained in the petition. Considerable latitude seems to be given in matter of amendments—*vide* pages 218-9 of the Law of Parliamentary Elections and Election Petitions by Frazer, III Edition. Thus the prayer for striking out paras 5 to 10 of the petition and of the alternative prayer in relief clause can be allowed by the Tribunal

34 There is no force in the contention of the respondent that the particulars, which should have been given in the list of particulars for corrupt and illegal practices, not having been given, the petition as a whole is liable to be dismissed. None of the allegations in paras 5 to 10 do come under the corrupt or illegal practice and as such list was not necessary. Even assuming that they do, the same have been mentioned in the petition itself; only because a further duplication has not been made by attaching a list containing the same thing. Such an omission is not fatal in any way. The list is only intended for not taking the respondent by surprise. The petition could be assumed to be accompanied by blank list. When the allegations contained in paras 5 to 10 are being deleted, it was not necessary to file any list. The omission to file such a list is a curable defect. There is no mandatory provision directing the Tribunal to dismiss the petition for non-compliance with the provisions of section 83(2) of the Act.

35. On the question of limitation, the plea of respondent is that the petition is barred under Rule 119 (b) of the Rules framed under the Representation of the People Act. The petition to be filed can be for *any one* of the reliefs mentioned in section 84 of the Representation of the People Act, 1951; it does not mean that the petition must be for one relief. If other reliefs are asked for, that relief, which would be hit by specific plea of limitation, would be denied and no other relief can be refused to be granted only because it has been put in the form of composite petition asking for several or alternative reliefs, and affecting different persons. Nay, even the same relief, asked for, on different grounds, could be granted by basing conclusions on grounds which could be urged without bar of limitation. The effect can at the most be only to guillotine that ground which is affected by the plea of limitation. The contention of the respondent, that the petition containing a prayer for relief of declaring the election as wholly void is barred by time and as such the entire petition should be dismissed, is not sound and according to law.

36. Examining the applicability of Rule 119(b) to the facts of this case, it is doubtful if the election for the general seat and for filling the reserved seat, though held simultaneously, can be called one election; the respondents 1 and 2 cannot be called to be "more returned candidates than one at an election" as laid down in Rule 119(b). There is only one returned candidate for the general seat and only one returned candidate for the reserved seat. In my opinion Rule 119(b) has no application to the facts of this case and cannot be invoked. The case can be governed only by Rule 119(a) and applying that Rule, the petition is clearly within time.

37. On the question whether the petitioner can be declared as a successful candidate when he has got the second largest number of votes, next to the respondent No. 1. This can happen either if the votes of respondent No. 1 *i.e.* 7964 or at least 2350 (difference between the respondent No. 1 and the petitioner) are declared void or that the votes cast in favour of respondent No. 1 are enbloc transferred to respondent No. 1 as under system of single transferrable votes. Neither have these facts been alleged and proved; on the other hand it is urged with some degree of force that the voters of respondent No. 1, who stand on the Congress label, would have chosen another candidate answering that colour, and description, making allowance for individual merit and lapses of the personality of the candidate. As we are left without any data, which was capable of being proved in such cases, the candidature of respondent No 1 being found terminated with disqualification, the votes, which he got could well have been distributed amongst the remaining candidates. The immediately next candidate who got less votes than the petitioner was short by nearly 1600 votes; nothing can be said with certainty that petitioner alone would have maintained his lead even though these 7964 votes were distributed amongst the rest of the candidates. It would be imposing the petitioner on the constituency as its representative when the majority of votes to be calculated on paper even would be less than half the number of voters attending the poll at election of which result was declared on 7th January 1952. Putting ourselves in the arm-chair of the electors of this constituency, it is impossible to reach the conclusion that the petitioner could be declared as elected member of Madhya Pradesh Assembly for. Janjgir-Pamgarh Constituency in Bilaspur District, Madhya Pradesh.

The 31st January, 1953.

(Sd.) B. R. MANDLEKAR, *Member.*

SCHEDULE OF COSTS

	Petitioner	Respondent 1	Respondent 2
	Rs. a. p.	Rs. a. p.	Rs. a. p.
1. Stamp for power	2 0 0	3 0 0	1 0 0
2. Stamp for exhibits	5 6 0	10 6 0	..
3. Stamp for Miscellaneous Petitions	2 0 0	1 0 0	..
4. Service of processes	0 12 0	..	..
5. Expenses of witnesses	28 0 0	..	..
6. Pleader's fee certified, and allowed	250 0 0	Certificates	not filed.
7. Printing charges	125 0 0	..	..
TOTAL	413 2 0	14 6 0	1 0 0

(Sd.) S. A. PANDE, *Chairman.*

The 31st January, 1953.

[No. 19/292/52-Elec. III].

S.R.O. 322.—WHEREAS the election of Shri Ramkrishna Rathor son of Mohan of Dharasiva, Tehsil Janjgir, District Bilaspur, as a member of the Legislative Assembly of Madhya Pradesh from the Champa constituency, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLII of 1951), by Shri Thakur Daoosing, s/o Sheoprasad Singh of Pondi (Shanker) Tahsil Janjgir, District Bilaspur;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provision of section 106 of the said Act the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJNANDGAON

ELECTION PETITION NO. 293 OF 1952 FROM CHAPA CONSTITUENCY OF BILASPUR DISTRICT

ELECTION CASE NO. 4 OF 1952 OF RAJNANDGAON.

QUORUM

Chairman:

Shri S. A. Pande, M.A., LL.B.

Members of the Tribunal:

Shri G. W. Chiplonker, M.A., LL.B.

Shri B. R. Mandlekar, B.A., LL.B.

Petitioner:

Thakur Daoosing, s/o Sheoprasad Singh of Pondi (Shanker), Tahsil Janjgir Distt. Bilaspur.

Versus

Respondents:

1. Shri Ramkrishna Rathor, s/o Mohan of Dharasiva, Tahsil Janjgir.
2. Shri Anandilal Pande, s/o Shankerlal of Chatapara of Bilaspur T. and D. Bilaspur.
3. Shri Jiwansao, s/o Judawansao of Champa, T. Janjgir, Bilaspur.
4. Dr. H. S. Thyodore of Champa, T. Janjgir, Distt. Bilaspur.
5. Shri Rajdhar, s/o Gajadhar of Afrid, T. Janjgir, D. Bilaspur.
6. Shri Sheodayalsingh, s/o Raghunathsingh of Sarkhon, T. Janjgir, D. Bilaspur.
7. Shri Silikram, s/o Bihari of Dhurkot, T. Janjgir, D. Bilaspur.
8. Shri Narayan Bajpai, s/o Ramshankar, Brahmin, resident of Champa, T. Janjgir, Distt. Bilaspur.
9. Shri Chhotelal, s/o Judawansao, Sonar of Champa, T. Janjgir, D. Bilaspur.

ORDER

Delivered on this 2nd day of February 1953.

This is a petition under Section 81 of the Representation of the People Act for setting aside the election of the respondent No. 1 Ramkrishna Rathor of the Champa Constituency of the Madhya Pradesh Legislative Assembly held in January 1952. It is admitted that the petitioner Thakur Daosingh is an elector included in the electoral roll of this constituency and that the respondents 1 to 9 were candidates who had duly filed their nomination papers and whose papers had been accepted by the Returning Officer. The respondent No. 8 Shri Narayan Bajpai and respondent No. 9 Shri Chhotelal had, however, withdrawn their candidature within time permitted by the Law and the Rules and did not, therefore, enter the election contest. The respondent No. 1 secured the highest number of votes and was, therefore, elected. It is further not disputed that an objection had been made before the Returning Officer to the nomination of the respondent No. 1 which did not succeed. It is further admitted that the respondent No. 1 had applied for appointment as a Patel under the Madhya Pradesh Abolition of Proprietary Rights Act (No. 1 of 1951) and the Rules made thereunder and that there being more than one candidate for Patelship there was an election in which he obtained the highest number of votes. Accordingly his name was submitted to the Deputy Commissioner for appointment as a Patel and eventually he executed forms A and B (Exs. R-3 and R-4) which are prescribed by the Rules made under Section 50 of the above Act.

2. The petitioner contended that having been a Patel the respondent No. 1 was not eligible to stand as a candidate for the State Legislative Assembly having regard to Article 191(1)(a) of the Constitution Act, the office of the Patel being an office of profit. The petitioner had also alleged corrupt and illegal practices in the body of the petition; but he did not file any list giving these particulars as enjoined by Section 83(2) of the Representation of the People Act, 1951 (No. 43 of 1951). We do not consider it necessary to set out the details of the corrupt practices mentioned in the petition at this stage. We may, however, state here that on the application of the petitioner we allowed him to delete paras. 5 to 10 which pertained to the allegations of these corrupt and illegal practices.

3. Respondent No. 1 Ramkrishna Rathor and respondent No. 3 Jiwansao alone entered appearance before us The respondent No. 3 supported the petitioner. The respondent No. 1 denied that he was a Patel on the date of the nomination. His contention was that he had not been validly appointed as a Patel and he further added that he had resigned his appointment by a letter of resignation dated 8th November 1951 addressed and delivered to the Tahsildar of Janjgir who on the same day accepted his resignation. The respondent No. 1 also contended that the office of the Patel was not an office of profit which was hit by the provisions of Article 191(1)(a) of the Constitution Act. He further added that the disqualification, if any, had been removed by the Madhya Pradesh Offices of Profit (Removal of Disqualifications Act, 1950, Act No. VII of 1950). Since we have not referred in detail to the allegations regarding corrupt practices which we allowed to be deleted, we do not set out here the reply which the respondent No. 1 made to these allegations. In the view we are taking it is also unnecessary, in our opinion, to refer to the allegations and the reply in this behalf in any detail. We will, however, briefly state our views on those contentions in this order.

4 We framed the following issues and our findings are as recorded:—

Issues	*Findings*
1. Whether on 15th November 1951 respondent 1, Ramkrishna Rathor held the post of the Patel of Mouza Bharashiv?	1. No.
2. (a) Whether he had resigned that post before that date?	2(a). Yes.
(b) Whether his resignation had been validly accepted upon before that date?	2(b). Yes.
3. Whether respondent was consequentially ineligible to be chosen as a member of the Assembly under Article 191 (1) (a) of the Constitution?	3. He was eligible.

We have not framed any specific issues in regard to the other contentions raised by the respondent No. 1 as already stated above. However, we propose to deal with those contentions briefly in the course of this order.

Reasons for the findings

Issue No. 1.

4. It has been admitted that the respondent No. 1 had applied for appointment of a Patel under Section 50 of Madhya Pradesh Act No. 1 of 1951 and the Rules thereunder and that he having secured the highest number of votes was sent up for appointment as a Patel. Ex P-1 is a copy of the order-sheets of the Revenue Case. The Tahsildar who held the election submitted the papers to the Additional Deputy Commissioner who is entitled under the Rules to make appointments of Patel. On 17th August 1951, the Additional Deputy Commissioner recorded in the order-sheet "Approved as proposed". The case then went back to the Tahsildar evidently with the object of getting forms A and B executed by the proposed Patel. It is contended by Shri T. P. Naik who appeared for the respondent No. 1 that the appointment is not at all regular and valid. He has referred me to the decision of the Revenue Tribunal of Madhya Pradesh in Mahadeo Damaji *Vs.* Govinda Ramchandra 1952 N. L. J. 557, and the observation therein that each stage in the process of appointment must follow the other like clock-work. I have considered this argument and I do not feel impressed by it. I do not think that the order of appointment was made irregularly. The fact that the Tahsildar has proposed that Ramkrishna Rathor the respondent No. 1 be appointed, does not make any difference to the ultimate order which the Additional Deputy Commissioner has passed. At the most I may say that the Tahsildar went beyond his power in making the recommendation though I also add that the recommendation was plain enough on the facts stated *viz.* that the application for

patelship had secured the highest number of votes and was found eligible in every other way already by permission having been given to him to stand for the election. The order "Approved as proposed" essentially means that the Additional Deputy Commissioner appointed him though the wordings could have been more appropriate. I also do not think that the fact that the forms A and B were got filled on the same day before the Tahsildar is a defect in following the Rules. I, therefore, conclude that the order of appointment of Patel was quite proper and valid.

Issue No. 2(a) and (b)

5. The appointment of a Patel continues under the Rules upto the death of the appointee or upto the date of his removal or resignation. The respondent No. 1 thus must be deemed to be holding his appointment and to have continued to be the Patel of the village Dharasiva till he resigned as he has contended. This takes us to issue No. 2. The letter of resignation is Ex. R-5. It is dated 8th November, 1951 and has been presented in person by the respondent Ramkrishna Rathor to the Tahsildar who endorsed on it on the same date that the resignation has been accepted. The fact of the resignation is not seriously disputed by the petitioner who in fact had applied to amend and to say that the resignation was not validly accepted by an authority competent to accept it. Indeed we have framed an issue *viz.* 2(b) in view of this contention Neither party has adduced any further evidence on this point. It was suggested by Shri Bobde during his arguments that this resignation is a suspicious document in so far as it purports to have been presented to the Tahsildar on 8th November 1951. Indeed when he was asked to express himself more fully he stated that his suggestion was that the petition was antedated. He sought to support his suggestion by the fact that when an objection was raised to the nomination of the respondent before the Returning Officer, he did not mention that he had resigned from the post and the objection was not tenable. Exs. P-3 and P-4 are copies of the proceedings before the Returning Officer. But they are of no help in the matter. There is no mention of how the respondent No. 1 attempted to meet the objection. Apparently the respondent simply waited till he found that proof was given of his being a Patel. He may have thought that he would step in with his plea of resignation as soon as documents were produced by the objector showing that he had been appointed as a Patel and had entered upon that office after complying with the requisite formalities and Rules. Simply by his silence at that time I do not think that it would be legitimate to presume that there was no resignation in fact all that is sumbitted before that date. The resignation was filed before an Officer of the State and without adequate evidence to support it I would be extremely loath to assume that any such illegal act was committed in the State business as was suggested. The fact that the petitioner did not attempt to adduce any such proof leads me to think that he did not seriously believe the suggestion which he now wants to put forth. He has, it appears to me, relied more upon the legal aspect of the resignation than on the time of its tender to the Tahsildar Janjgir.

6. Under the Rules if the Patel wants to resign he has to tender his resignation by giving three months notice to the Tahsildar (Rule 16 of the Rules framed under section 50 of Madhya Pradesh Act No. 1 of 1951). The presentation of the letter of resignation to the Tahsildar was, therefore, quite in order. It is urged by the learned counsel for the respondent No. 1 that the acceptance of the resignation by the Tahsildar was a valid acceptance in as much as the forms A and B which alone made the appointment of the Patel effective, were accepted by him. I feel that the argument is altogether unsound. Acceptance of the two forms was in my opinion more of a routine and administrative nature which the Additional Deputy Commissioner could depute to the Tahsildar in order that the sureties may be verified and the Patel may more conveniently be able to do it there. The acceptance of the resignation, however, is not a matter which could be deputed to any subordinate officer nor was the matter remitted to the Tahsildar for that purpose. The acceptance of his resignation by the Tahsildar who had no authority can have no legal effect.

7. I find from the record that this improper acceptance of the resignation of the appointment of the Patel by respondent No. 1 was discovered by the Tahsildar who succeeded Shri Banjari who had accepted the resignation. He, therefore, put the papers before the proper authority *viz.* the Additional Deputy Commissioner who by his order, dated 24th September 1952 (Ex. P-2) confirmed the resignation and ordered that further steps be taken for the appointment of another Patel. There is, therefore, little doubt that the resignation ultimately went to the proper authorities and was accepted.

8. It was argued by Shri Bobde for the petitioner that the resignation did not have any effect till it was accepted on 24th September 1952 which evidently is long after the date of nomination. On the other hand Shri Naik has urged

that as soon as the resignation was put into the hands of the Tahsildar the status of the respondent as a Patel came to an end in as much as the letter of resignation requested that his resignation be accepted. Under the Rule 16 of the Rules in this behalf a Patel may resign his office by giving three months previous notice to the Tahsildar. It was urged that in any case the resignation cannot be effective till three months elapsed. It seems to me that the question of notice has no bearing upon the status of a person who resigns during the period of notice. The whole object of providing for a notice is that the person who has to make arrangements in place of the resigning person may have some time to think over and take steps to fill that vacancy. But I think that when no such notice is given the status of the person resigning does not continue. The failure to give a proper notice will only entail certain consequence to the person resigning without a proper notice. But as already stated that is altogether a different matter. A government servant may under the contract with the State resign after certain notice or the State may terminate his services by a certain notice. If either of them do not observe the stipulation regarding the notice, certain consequences will follow such as the State may have to pay its servant for the period of the notice or the servant who resigns without a proper notice may expose himself to certain disciplinary actions or may be some other consequences also. But that does not in the least mean that inspite of that termination of the service or his resignation he continues to be the servant. The analogy of a landlord and tenant is not apposite. There it is evident that the relationship itself cannot be terminated until a proper notice is given and the notice expires. Civil Courts are quite familiar with cases where it is often found that the landlord has given a notice which is not according to law and it is, therefore, ineffective to put to an end to the relationship of landlord and tenant. That is not the case here. In Ex. P-5 it has not been stated that he gave notice of three months to the Tahsildar. It simply says that he resigns his office since he is desirous of standing for the State Legislature. Evidently his intention was to resign forthwith. It is not shown that he worked as a Patel after that date. Burden of it was on petitioner. My conclusion, therefore, is that the respondent No. 1 resigned his appointment as a Patel on 8th November 1951 and that on the date of nomination *viz.* 15th November 1951 he was not a Patel of Dharashiv. I also hold that his resignation was validly accepted though I add that it was not so accepted before the date of nomination. In my view however, that is a matter of no consequence.

Issue No. 3.

9. Not being a Patel on the date on which he filed his nomination paper the respondent No. 1 was not disqualified under Article 191(1)(a) of the Constitution to offer himself as a candidate for the Madhya Pradesh State Assembly. In this view it is not necessary for me to consider whether the office of the Patel was an office of profit and further whether the disqualification was removed by the Act of the State Legislature. I will, however, briefly state my views on these points. I may at once say that in my view the office of the Patel under the Madhya Pradesh Abolition of Proprietary Rights Act is an office of profit. The Patel is entitled to get a drawback upon the collection of land-revenue which he makes from the occupants in the village. I do not accept the argument of Shri T. P. Naik that in order that an office may become 'an office of profit' there must be some sort of regularity of income. In the matter of the election petition presented by Shrimati Hansa Jivraj Mehta the Election Tribunal indicated its view that the office of the Vice-Chancellor of the Baroda University though only an honorarium was paid, was an office of profit and it disqualified Shrimati Hansa Jivraj Mehta from being nominated as a candidate for the election to a Legislature. (Gazette of India Extraordinary, dated 23rd August 1952, 2008 at page 2010). I do not want to reproduce the arguments referred to there.

10. It was then said that the disqualification was removed by the Madhya Pradesh Offices of Profit (Aemoval of Disqualifications) Act, 1950. The Act came into force on 24th March 1950. At that time the office of the Patel under the Madhya Pradesh Abolition of Proprietary Rights Act did not exist. The Legislature, therefore, did not include in the schedule of the list of offices of profit under Government which were exempted from the disqualification the Patel under Act No. 1 of 1951, though Patels appointed under various other Acts were so mentioned in that schedule. I do not, therefore, accept the arguments of Shri T. .P Naik that the Patel under the Act No. 1 of 1951 was also included in the schedule to Act No. VII of 1950. I am strengthened in this conclusion by the fact that the Madhya Pradesh Legislature passed a further Act amending Act No. VII of 1950 by Act No. IV of 1952. By that Act "any person appointed as or performing a function of a Patel or the mukaddam under any law for the time being in force" was included in the schedule. Further this Amending Act was ordered to be retrospective only with effect from 23rd February 1952. It is a canon of construction quite well known that the Legislature knows what it proposes to do. Evidently

in introducing this wider exemption in regard to a person performing a function of a Patel or a mukaddam the Legislature desired to include the Patel under the Act No. 1 of 1951 who had come into existence before the amending Act. In fixing the date from which the Act is to get the retrospective effect the Legislature clearly did not want to give retrospective operation to this exemption beyond that date. It is, therefore, idle to suggest that the date of the retrospective operation is of no consequence and should be ignored. Indeed no word in a statute can be ignored in construing the provision. My conclusion, therefore, is that the respondent No. 1 was not ineligible under Article 191(1)(a) of the Constitution for being nominated to the Madhya Pradesh State Assembly.

11. In this view of the matter it is not necessary for me to pursue and decide the other contentions raised in this petition. Indeed we have dealt with these contentions in the order we passed on 31st January 1953 in the Election Petition No. 292 of 1952 from Janjgir-Pamgarh Constituency made by Jwalaprasad Mishra against Mahadeo and others. In that case the respondent No. 1 had opposed the deletion and we had stated that the consequences of deletion will be allowed to be argued and decided. Though this fact of opposition has not been mentioned in this case, it was understood that it would be treated in the same way and will not be taken as conceded. Apart from what we have stated there on the power of this Tribunal to permit amendments of the election petition I would add that all the cases which the counsel brought to my notice and which I could myself see were cases in which something was sought to be added anew. This is a case in which something is sought to be deleted. It seems to me that there is an amount of difference between adding something and deleting something from a petition or pleading. It may as well be that the petitioner may not press the allegations which he seeks to delete and which we would refuse him leave to delete if we take the view that we have no power to permit him to do that. Shri Naik urged upon us that by this doing the action of the petitioner amounts to withdrawal of the petition which cannot be permitted except as provided in the Act. He went so far as to say that the petitioner may in this fashion withdraw all his allegations in the petition and yet say that his petition stands. That according to him means except the title of the petition and the signature at the foot of the petition nothing remains. But it seems to me that this argument is altogether unsupportable first because all the allegations are not being withdrawn and no Tribunal can be cheated into giving its permission to withdrawal under this cloak. Shri Naik urged that it is the petition as a whole which is liable to be dismissed because the petitioner does not comply with a particular provision—in this case a list of the corrupt practices accompanying the petition. What the Election Commission may have done with the petition for the failure to supply this list along with the petition is not for us to contemplate. We are governed by section 90(4) of the Act. The Legislature has used the word 'may' in section 90(4) while it has used the word 'shall' in section 85 of the Act. I feel that the use of these two different words in these two provisions is deliberate.

12. Shri Naik then urged that the word 'may' in this case means 'shall' in as much as if certain circumstances are not found to exist the Tribunal was obliged to pass the necessary order contemplated by the provisions. He referred me to *Gabdoo Kalloo Vs. S. Rajan and another*, 1953 N.L.J. page 7. I do not see how this case supports him. On the contrary I feel that the word 'may' in section 90(4) has been used with the object of giving discretion to the Election Tribunal. A similar view was taken in election petition No. 83 of 1952 in the matter of the Representation of the People Act, 1951, petitioner *Shri Purushottam, das Ranchhoddas Patel Vs. Shantilal and others.* (*Gazette of India Extraordinary* Friday, October 10, 1952, page 2262).

13. Shri Naik also urged that what I am concerned is a petition and if the petitioner does not comply with the provisions it is the petition that is to be dismissed. The whole emphasis is thus led by him upon the word 'petition' occurring in this Chapter II of Part VI of the Act 43 of 1951. I think that the emphasis placed by Shri Naik is not quite correct. The petition, as I have seen, attacks the election of respondent No. 1 both on the ground of improper acceptance of his nomination paper and on the ground of corrupt practices occurring in the election. The construction placed by Shri Naik that a petition must be dismissed when it does not comply with a particular provision overlooks the fact that the petitioner is punished both for faults committed and for faults which he has not committed. It seems to me utterly unreasonable to think that when portions of a petition are quite good and entitled to be enquired into and which are quite separable should not be enquired into because the certain portions in the same petition are not good and according to law and cannot, therefore, be enquired into. The absence of the list of corrupt practices, therefore, in my opinion, would not entitle the respondent No. 1 to ask me to dismiss the petition on that ground. Indeed I think it will be a wrong exercise of discretion if I do it.

14. In the view I have taken about our powers under section 90(4) of the Act I do not agree with Shri Naik that the constitution of this Tribunal itself was unauthorised. Shri Naik has attacked this petition on the ground that the verification of the petition has not been properly made. I do not think that the verification in this case is open to such attack. "Best of my knowledge" in the verification may not be quite a happy expression but surely it does mean that the contention of those paras are verified to the knowledge of the petitioner. The second part of the verification cannot also be objected to simply because the source of the information is mentioned. Ordinarily in such verification it is not necessary to mention the source of information, which information has been believed to be true. This superfluous expression in the verification does not make the verification bad.

15. I have already stated that two of the respondents were not initially made respondents in the petition. I have stated that they had withdrawn and had not contested the election. Section 82 of the Act 43 of 1951 enjoins that a petitioner shall join as a respondent to his petition all the candidates who were duly nominated. They should have been made parties to this petition but section 85 does not enjoin that the petition shall be dismissed if all the duly nominated candidates are not joined as respondents. I agree that section 82 was not mentioned in section 85 because the Election Commission would not be in a position to know whether all the duly nominated candidates were joined as respondents or not without an enquiry. But I find that even in section 90(4) section 82 is not mentioned. If it was intended that this non-joinder should entail dismissal of the petition, 90(4) would have included that section. Ordinarily a non-joinder of a party who is only a proper party and not a necessary party, does not entail the dismissal of the cause. Shri Naik has drawn my attention to a decision by an Election Tribunal over which Shri N. S. Lokur late Judge of the Bombay High Court presided (Election Petition No. 287 of 1952 before the Election Tribunal at Lucknow, Gazette of India, Extraordinary, December 1952, page 1034). I have carefully gone through the arguments advanced by the Tribunal in coming to the conclusion that it did; but with utmost respect I am unable to agree with the view taken there. It appears to me that all the cases which were referred by that Tribunal were cases in which the petitioner desired that a declaration that not only the election of the successful candidate be set aside but that he himself should be declared elected in his place. To such a petition, it is evident, that all the other duly nominated candidates should be made respondents, the reason being that any of them will have the right to file a recrimination in order that this claim to be declared as elected should be investigated and decided. That is not the case here. It further appears to me that the non-joinder cannot entail a fatal result. Section 90(1) enjoins publication of the petition in the Official Gazette and further enjoins that at any time after such publication any other candidate subject to the provisions of section 119 will be entitled to be joined as a respondent. Evidently it means a candidate who was not already a party as a respondent could come forward to be joined as such a respondent. If he can come and make a petition, I do not see why the petitioner himself could not apply to join them. This joinder evidently is with the object that he may have an opportunity to show that the petitioner ought not to be declared elected. (See at page 391 and 392 of Law of Elections and Election Petition.....Nanakchand Pandit, First Edition, 1951). The non-joinder of respondents 8 and 9 in my opinion, therefore, does not entail the dismissal of the petition of Thakur Daoosing.

16. In the result my conclusion is that the petition of Thakur Daoosing should be dismissed.

The 2nd February, 1953.

(Sd.) G. W. CHIPLONKER, *Member.*

17. I have had the advantage of pursuing the proposed order of my colleague Shri Chiplonker who has held that the respondent did hold an office of profit *viz.* of Patel under Act I of 1951 but he was not under that disqualification on the date of the nomination *i.e.*, on 15th November 1951. I respectfully differ from my colleague and in the conclusions I have reached, the election petition of the petitioner should be allowed as the respondent No. 1's nomination form should have been rejected and that it was improperly accepted. This has according to me materially affected the result of the election and as such the election of the respondent No. 1 is void.

18. (a) Before giving my reasons for the above conclusions, I wish to supplement the reasons for my reaching the same conclusion, which has been arrived at by my colleague, on the question of non-joinder of Shri Narain Bajpai and Shri Chhotelal, as parties to the election petition by the petitioner, who have since been noticed and joined as parties, but they have chosen to remain absent.

(b) No doubt section 82 of the Representation of the People Act, 1951, requires that the petitioner shall join as respondents to his petition all candidates, who were duly nominated at the election other than himself if he was so nominated. The present petitioner is an elector who had not been nominated. Unlike sections 81, 83 or 117, which provide a guillotine of dismissal for non-compliance at the hands of the Election Commission, section 82 has not been included for such summary dismissal under section 85 of the Act. Even Election Commission is saved from this duty of dismissal under section 85 if the petitioner satisfies the Commission that there was sufficient cause for his failure in which case the default is condoned. The powers of the Election Tribunal are wider in matter of exercise of discretion; there is no obligatory duty on the Tribunal to dismiss and it can refuse to dismiss, on sufficient cause being shown for non-compliance or failure. Of course this has to be exercised not capriciously but on principles of justice, equity and good conscience and that too for ensuring a fair and effectual trial of the petition.

(c) The joinder of persons who had been duly nominated at the election, other than the person duly nominated at the election and declared elected, is not for seeking any relief against them but for enabling them to contest recrimination by petitioner himself or to secure recrimination of seat for themselves as laid down in section 97; in other cases, they enjoy the position of proper parties as opposed to necessary parties, as understood in the eye of law. However, section 82 has made it necessary for a proper party to be joined as a party, but this has to be understood in a reasonable way *i.e.* when such persons could be interested in the relief claimed. In the present case no relief of recrimination is claimed by the petitioner.

(d) Election petition calling in question any election has to be presented within certain time limit as prescribed under section 67 read with Rule 119 of the Representation of the People Act, 1951. The election petition can only be filed for the reliefs that could be claimed under section 84 and that too against the returned candidate.

(e) The consequence of non-joinder cannot defeat the election petition itself, if provisions of Cr. 1 rule 9 of the Civil Procedure Code are borne in mind. The Tribunal is enjoined to try the Election Petition, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. The persons named *viz.* Shri Narain Bajpai and Shri Chhotelal have been joined under Order 1 rule 10 of the Civil Procedure Code by the Tribunal and that cures all defects if any. 'May' in section 90(4) cannot mean 'shall'.

(f) However, in my opinion, Shri Narain Bajpai and Shri Chhotelal, do not answer the description of being joined as parties as required under section 82 of the Representation of the People Act, 1951, which applies to "duly nominated candidate at the election". The Representation of the People Act uses the expression "each person who has been nominated as a candidate" in section 76 and makes him liable to lodge a return of the election expenses; there is no mention of '*duly*' before nomination or of "at the election" after 'candidate'. In fact for the purposes of Parts VI, VII and VIII of the Representation of the People Act, 1951, the word candidate has been defined in section 79(b) and it lays down that a candidate means a person who has been or claims to have been duly nominated at any election. Section 82 would apply to candidates who were duly nominated at the election of Champa Constituency of Madhya Pradesh Legislative Assembly. Definition given of a validly nominated candidate' in Rule 2(f) is meant for the Rules themselves and cannot be a guide to interpret the Act and even otherwise it does not lend much assistance to the respondent No. 1.

(g) The nomination of a candidate is invited by a public notice under section 31; merely presenting a nomination paper does not constitute valid nomination. Certain requirements are prescribed for valid nomination as laid down in sections 33 and 34 of the Act and Rules 4 and 5 framed thereunder. Nomination form has to be accompanied by deposit and this deposit is not forfeited but returned to a candidate withdrawing, even though he does not get any votes, may more than one-sixth of the votes polled, as he is not regarded as a duly nominated candidate at the election. Further declaration of symbol has become an integral part of the nomination; candidate has to express the particular symbol chosen by him for his first preference and has also to specify two other symbols for his second and third preferences respectively. List of validly nominated candidates in the case of an election at which poll is to be taken has to be published under section 38 read with rules 10(3) and 11. Symbol has to be assigned to the nominated candidates; but this symbol has not to be assigned to those whose nomination forms were rejected or to those who have withdrawn their candidatures under section 37. A candidate becomes a duly nominated candidate at the election after his nomination paper is accepted by the Returning Officer and symbol is assigned to him. The

candidates named *i.e.* Shri Narain Bajpai and Shri Chhotelal not having been included in the list of persons having valid nominations under section 38, cannot be said to be duly nominated candidates at the election. In this view they were not even liable to be made parties to this election petition.

19. Coming to the important question, whether the office of profit held by the respondent No. 1, as Patel of village Dharashiv would not be a subsisting disqualification for him on 15th November 1951 under Article 191 of the Constitution, as to expose him to have the rejection of his nomination paper. Actual making of profit by the incumbent is not necessary to make an office an "office of profit"; it is enough if the holder of the office may *reasonably* be expected to make a profit out of it. The real question is whether the remuneration of any kind is attached to the office; office means an employment with fees and emoluments thereto belonging (Blackstone). Only holders of employment *i.e.* offices of profit under the Government are disqualified by the Constitution, while holders of or persons enjoying benefits under contracts of certain kinds with the Government are disqualified under section 7 of the Representation of the People Act. The present case is of disqualification under Article 191 of the Constitution and not of contract hit by section 7 of the Act. The office of Patel under Madhya Pradesh Abolition of Proprietary Act I of 1951 is an office of profit as envisaged in Article 191 of the Constitution.

20. The respondent No. 1 having been duly appointed Patel and having executed all necessary documents required to clothe him with the office of Patel, wants to save himself from the disqualification by urging that he had tendered his resignation on 8th November 1951 addressed to the Tahsildar Janjgir. Having once entered into office of Patel, it would continue to be so held by him till the expiry of term, if one is fixed or till his removal in any of the prescribed ways. There is presumption in favour of continuity vide section 109 of the Indian Evidence Act. The burden of proof in this respect would lie on the respondent 1 to prove the fact showing that he did not hold the office of Patel on 15th November 1951, when once he was proved to be appointed and to have executed an agreement and also a surety bond, dated 24th October 1951. The Returning Officer at the time of scrutiny has also held that the respondent No. 1 would be deemed to have entered the office of Patel on the day he executes the agreement but in as much as the copies of agreement and surety bond were not filed before him, the nomination form of respondent No. 1 could not be rejected. The respondent No. 1 kept back the fact of his tender of resignation, dated 8th November 1951 as a Patel from the Returning Officer and this omission has come for serious comment at the hands of the counsel of the petitioner.

21. The Rules framed under Act I of 1951, under section 50 under which the appointment of a Patel is made require three months previous notice to be given by a Patel if he wants to resign vide Rule 16. Three months do not expire between 8th November 1951 and date of nomination *viz.* 15th November 1951. The appointing authority of a Patel is the Deputy Commissioner whose authority is delegated to the Additional Deputy Commissioner who made the appointment of respondent No. 1. The resignation, if any, has to be accepted by the appointing authority. There is no power given to the delegated authority to delegate its own authority and this cannot be done in law as well. Tahsildar had not been delegated the authority to accept the resignation of respondent No. 1 as Patel and he could not accept the resignation of respondent No. 1.

22. The respondent No 1 had not even shown that he did not hold the office of Patel after 8th November 1951. Mere tender of resignation, dated 8th November 1951 is not sufficient. The matter was capable of proof and evidence not having been tendered of any kind, including of his own testimony, an adverse inference can be drawn against respondent No. 1. There is an entry of public record Ex. P-3 showing the name of respondent No. 1 as a Patel between the period from 20th August 1951 to 25th September 1952.

23. That the so-called acceptance of the resignation by the Tahsildar has been of no value is clear from the facts, as contained in the documents on record, which show that the Tahsildar had no authority to accept resignation and hence the papers were laid before the appropriate authority which accepted the resignation on 24th September 1952 vide Ex. P-2. The resignation accepted by the Tahsildar could thus be of no avail and would not exhonerate the respondent No. 1 from the cloak of disqualification created for holders of office under Article 191 of the Constitution. The resignation could not be retrospectively accepted as to remove the disqualification already earned by the respondent, and on the basis of which the present petition was being filed.

24. It was contended that the unilateral act of respondent No. 1 is sufficient to terminate the office of Patel and acceptance is not necessary. If there had been no rules for giving three months previous notice, the matter might have been different. There was no acceptance of resignation by the Deputy Commissioner on 15th November 1951. An analogy of a servant agreeing to render personal services was sought to be introduced by the counsel for respondent No. 1 but it stood on a footing different from a Patel who was required to observe certain formalities such as of making over charges of his office. Mere fact of tender of resignation does not itself vacate the office of Patel. The power to accept resignation implies also the power to refuse it and hence a Patel whose resignation is not accepted would continue to be a Patel until its due acceptance by the Additional Deputy Commissioner.

25. It was further contended for the respondent No. 1 by his counsel that the respondent No. 1 when he was appointed Patel entered into a contract of personal service as an agent of the State and he can refuse this service and no question of acceptance or notice does arise and it might at the most raise question of his liability in damages or the liability of the Tahsildar in accepting the resignation of respondent No. 1 when he had no such authority to accept. The argument that after resignation, though tendered but not accepted, the relationship is terminated is not correct; it is kept alive even for determining damages, it is alive for brushing the respondent No. 1 with the colour of disqualification of an holder of an office of Patel envisaged by Article 191. Sending resignation to a person not authorised and acceptance by such unauthorised person does not give discharge to the respondent No. 1. Tahsildar, it was urged, was an agent of the State Government and hence acceptance by Tahsildar amounts to exhonerating the respondent No. 1 from the position of a holder of office of profit of Government. This is not correct in law, as the appointing authority was never the Tahsildar.

26. Moreover State Government had only one way *viz.* of legislation open for removing the disqualification of respondent No 1 and others of his class, which were not purposely included when the date fixed is 23rd February 1952 for retrospective operation of the Act IV of 1952. It could have under its supreme wisdom and sovereign authority, taken it back to a date prior to 15th November 1951. It is clear that the State Government did not want to remove the disqualification of members of Legislative Assembly who had already earned it by getting themselves nominated and elected to Legislature, in spite of such patent disqualifications falling under Article 191 of the Constitution.

27. Thus the nomination form of respondent No. 1 was improperly accepted. Presumption of the fact that the result has been materially affected arises when the case of improper acceptance arises in selection to the successful candidate.

28. The result is that the petition is allowed with costs and the election of respondent No. 1 is declared to be void.

The 2nd February, 1953. (Sd.) B. R. MANDLEKAR, *Member*.

29. I had the advantage of studying the opinions of both of my learned colleagues. I agree with the findings of both of them that respondent No. 1, Shri Ramkrishna Rathor, who was elected to the State Legislature from this constituency, had held the office of profit as a Patel of mouza Dharaseo. Such Patel receives as his remuneration a commission of annas two in the rupee of his collections from land revenue and rents. While holding such an office he incurred a disqualification under Article 191(1) (a) of the Constitution. He had executed the agreement Ex. R-4 and the security bond Ex. R-3 on 24th October 1951 for the discharge of his duties as such Patel.

30. The main point for consideration in this case is whether on 15th November 1951, which was the date on which he had filed his nomination paper, he had held that office and was, therefore, disqualified to stand as a candidate for the State Legislature.

31. Ex. R-5 shows that on 8th November 1951 this respondent tendered his resignation of his office as the Patel to the Tahsildar, and that the Tahsildar accepted it on the same date. The point for consideration, therefore, is whether on account of this resignation the respondent had ceased to be the Patel on 15th November 1951, on which date he had presented the nomination paper.

32. Rules 1 to 16 framed under Section 50 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Manals, Alienated Lands) Act, 1950 (No. 1 of 1951) show that while the Deputy Commissioner is the appointing and dismissing authority, a Patel may resign his office by giving three months' previous notice to the Tahsildar under Rule 16 *ibid.* That Rule shows that for a valid resignation, three months' previous notice is necessary. In view of that Rule and the terms of the agreement and security bond executed by respondent No. 1 he could not legally resign his office without giving three months' previous notice. Consequently respondent No. 1's resignation tendered on 8th November 1951 could not be legally effective till 8th February 1952. The Rules do not confer any power upon the Tahsildar to accept resignation of a Patel forthwith or with any shorter notice. I, therefore, hold that on 15th November 1951 respondent No. 1 had not legally ceased to be the Patel of the village, and that he was consequently disqualified to stand as a candidate for the State Legislature.

33. The disqualification of such a Patel has been removed by the Madhya Pradesh Offices of Profit (Removal of Disqualifications) (Amendment) Act, (No. IV of 1952) with effect from 23rd February 1952. As that Act has no further retrospective operation, I find that it does not help the respondent.

34. The proceedings Ex. P-4 before the Returning Officer and his order Ex. P-5 show that the Late Dr. Indrajit Singh had objected to respondent No. 1's nomination paper on the ground that the latter was not eligible to stand as a candidate, when he held the office of the Patel. The proceedings show that respondent No. 1 had not brought to the notice of the Returning Officer that he had executed the agreement in form B and the security bond in form A prescribed by Rule 4 *ibid.* They further show that he had also not brought to the notice of the Returning Officer that he had tendered his resignation on 8th November 1951. These facts show that respondent No. 1 had suppressed these material facts before the Returning Officer. He had evidently done so in order to get himself validly nominated. If he had brought these facts to the notice of the Returning Officer, the Returning Officer might possibly not have accepted his nomination paper. He would then have held that respondent No. 1 was holding the office of the Patel, and that he had not legally resigned in accordance with Rule 16 by giving three months' previous notice. I, therefore, hold that the petitioner was disqualified to be a candidate for the State Legislature, because he had not legally ceased to be the Patel on 15th November 1951.

35. I agree with the finding of my learned colleagues that the subsequent joinder of respondents 8 and 9, who had withdrawn their candidature, is not fatal to the maintainability of the petition. I further agree with their findings that the verification of the petition was in accordance with law, and that it was permissible for the petitioner to withdraw his pleas of alleged illegal and corrupt practices. We have fully stated our reasons for these findings in our order in Election Petition No. 292 of 1952 (Dr. Jwalaprasad Mishra *Vs.* Mahadeo) arising from Janjgir-Pamgarh constituency delivered on 31st January 1953.

36. I, therefore, agree with the opinion of my learned colleague Shri B. R. Mandlekar that the petition must be allowed with costs, and that the election of respondent No. 1 be declared as void.

The 2nd February, 1953. (Sd.) S. A. PANDE, *Chairman.*

ORDER OF THE TRIBUNAL

37. The petition is allowed and the election of respondent No. 1 Shri Ramkrishna Rathor is declared as void. The respondent No. 1 shall bear his costs and pay those incurred by the petitioner. We fix Rs. 250 as counsel's fee. The costs of publishing this petition amounts to Rs. 97/8/-. This shall be recovered from the deposit made by the petitioner in the first instance. He will be entitled to recover the same from respondent No. 1. The balance of the deposit made by the petitioner under Section 117 of the Representation of the People Act, 1951 shall be refunded to him.

The 2nd February, 1953. (Sd.) S. A. PANDE, *Chairman.*

The 2nd February, 1953. (Sd.) G. W. CHIPLONKER, *Member.*

The 2nd February, 1953. (Sd.) B. R. MANDLEKAR, *Member.*

SCHEDULE OF COSTS

	Petitioner	Respondent 1
	Rs. a. p.	Rs. a. p.
1. Stamp for power	1 0 0	2 0 0
2. Stamp for exhibits	3 8 0	8 8 0
3. Stamp for miscellaneous petitions	4 0 0	..
4. Pleader's fee, certified and allowed	250 0 0	Certified not filed.
5. Printing charges	97 8 0	..
Total	356 0 0	10 8 0

The 2nd February 1953.

(Sd.) S. A. PANDE, *Chairman.*
[No. 19/293/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

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